

## **REMARKS**

This paper is responsive to the Final Office Action dated March 15, 2006, having a shortened statutory period expiring on June 15, 2006.

Claims 1-6, 11-16, 20-23 and 31-37 are pending in the application.

Claims 1-6, 11-16, 20-23 and 31-37 were rejected in view of various combinations of U.S. Patent No. 5,666,265 issued to Lutz ("Lutz"), U.S. Patent No. 5,292,312 issued to Delk et al. ("Delk 312"), and U.S. Patent No. 5,300,037 issued to Delk et al. ("Delk 037").

Applicants have carefully reviewed the language of the rejections of the Final Office Action, and, among other things, have found that the rejections fail to address all limitations of the pending claims. Moreover, with respect to many of the claim limitations that were addressed in the Final Office Action, Applicants have been left to speculate as to the Final Office Action's intended application of the cited references to the claim limitations.

For example, apparently with respect to at least Applicant's independent claim 1, on pages 2-3 of the Final Office Action, the Examiner first states that "Lutz discloses the claimed invention except that instead of fiber, electrical, or metal cables they show power cables," and the Examiner then states that "Lutz discloses all of the [claimed] limitations ... except for the hooks being mushroom shaped, ...." In contrast, on page 5 of the Final Office Action, the Examiner states that "Lutz discloses all of the [claimed] limitations ... except for the cable fastener having a head having a width greater than the predetermined

width and defining an opening.” To further confuse the matter, on page 4 of the Final Office Action, the Examiner states that “Lutz in view of Delk 312 discloses all of the [claimed] limitations ... except for one of the plurality of hook and loop mechanisms that covers at least all of one side of the cable fastener and the head portion having a size substantially similar to a size of the variable width opening.” In other words, the Final Office Action is inconsistent with respect to Lutz and leaves the Applicants in a quandary as to the intended rejections.

Further, based on incomplete language recited in the Final Office Action (see beginning of last paragraph on page 2 of the Final Office Action), Applicants have assumed that the 35 U.S.C. § 103(a) rejection of claims 1-6, 11-16, 20-23, and 31-37 as being unpatentable over Lutz in view of Delk 312 also includes the additional citation to Delk 037 to complete the combination of references that the Examiner intended would constitute the combination of references used for the § 103(a) rejection of claims 1-6, 11-16, 20-23, and 31-37. However, Applicants note that the Examiner has also provided a second 35 U.S.C. § 103(a) rejection of claims 1-6, 11-16, 20-23, and 31-37 as being unpatentable over Lutz in view of Delk 037 only (see beginning of last paragraph on page 5 of the Final Office Action).

Regardless of the vague and nebulous treatment of Applicants’ claims in the Final Office Action, Applicants believe the following is a complete response to the rejections of the Final Office Action (or certainly, as complete a response as Applicants are capable of providing, given the aforementioned infirmities). Further, while not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants reserve the right, for example, in a continuing application, to establish that the cited

references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

*The Rejections under 35 U.S.C. § 103(a)*

For reasons stated above, Applicants assume that claims 1-6, 11-16, 20-23, and 31-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lutz in view of Delk 312 and in further view of Delk 037. Applicants respectfully traverse.

As generally required by independent claims 11, 23, and 34, claim 1 recites the following:

An apparatus comprising:  
a rigid frame, wherein the rigid frame comprises at least one substantially planar surface;  
a substrate having a first surface and a second surface substantially opposite the first surface, wherein the first surface of the substrate comprises a first plurality of fasteners of one of a plurality of hook and loop mechanisms and the second surface of the substrate is coupled to the substantially planar surface of the rigid frame; and  
a cable fastener comprising a second plurality of fasteners of the one of the plurality of hook and loop mechanisms that covers at least all of one side of the cable fastener, wherein the second plurality of fasteners is configured to engage the first plurality of fasteners, the cable fastener is completely detachable from the substrate, and the second plurality of fasteners is configured not to engage any portion of the cable fastener,  
wherein the cable fastener is further shaped to define:  
a variable-width opening,  
an elongated body having a predetermined width,  
a head portion at one end of the body, the head portion having a width greater than the predetermined width and having a size substantially similar to a size of the variable-width opening,  
the head defining an opening through which the elongated body of the cable fastener may pass.

In an attempt to demonstrate the claimed “cable fastener,” the Final Office Action refers to Lutz’s elongate strip 282. However, as stated at col. 8, lines 50-53 of Lutz, Lutz’s elongate strip 282 “provides a covering of female VELCRO 283 on one side and male VELCRO 284 on the other.” With this configuration, the elongate strip 282 may engage another portion of the elongate strip 282 as illustrated by the elongate strip 282 of FIG. 7b of Lutz when the elongate strip 282 is wrapped about a bundle of power cords and cables 507. Thus, unlike Applicants’ claim 1 that requires the cable fastener being “configured not to engage any portion of the cable fastener” (emphasis added), the elongate strip 282 includes fasteners that are specifically configured to engage another portion of the elongate strip 282. In other words, Applicants’ cable fastener is not evident from Lutz’s elongate strip 282.

Further, the Examiner’s arguments appear to be misplaced because the Examiner has previously presented the same arguments in earlier Office Actions and Applicants have successfully argued against such interpretations on several occasions and, in so doing, have already overcome the above rejection. As a result, apparently, to move prosecution forward, Applicants will be forced to appeal the Examiner’s position in the instant application.

Rather than being cited to overcome the above infirmity of Lutz, because Delk 312 is referred to immediately following the Final Office Action comment on page 4 regarding a different infirmity of Lutz, it appears that Delk 312 is cited in an attempt to show a cable fastener “having a head having a width greater than the predetermined width and defining an opening” (Final Office Action, page 4). However, the strap portion 30 of Delk 312 includes multiple infirmities which cause Delk 312 to be a poor

candidate for a purportedly successful combination with Lutz. For example, the elongate strip 282 of Lutz requires two fastener type materials, while Delk 312 teaches the use of a strap portion 30 including only one type of fastener material. Delk 312's single fastener type strap portion 30 would teach the user to modify Lutz's double fastener elongate strip 282 to include only a single fastener type material, and a single fastener type material on the elongate strip 282 would not work. Thus, Delk 312 would not be combined with Lutz for this reason.

Further, for purposes of securely attaching cables, the strap portion 30 of Delk 312 uses a much greater surface area than Lutz to attach cables to a substrate with the strap portion 30. The large surface area of the strap portion 30 of Delk 312 does not fit well with Lutz's substrate and, even if it did fit, the strap portion 30 would create a more forcefully secured attachment than needed (or advisable) than by the cable fastener of Applicants. Such a forceful attachment leads to potential damage when fiber optic cables are added or removed from a cable fastener attachment or the cable fastener is to be moved (on the substrate). Applicants are not concerned with an overly secure attachment, but with an attachment that provides ease-of access and relatively low force, particularly when fragile fiber optic cabling (or other cabling) is to be handled. The larger-than-necessary strap portion 30 also leads to the problem of Delk 312's strap portion 30 not properly fitting the surface area disclosed in Lutz. The size discrepancy between Delk 312's strap portion 30 and Lutz's surface would cause haphazard, if any, cable attachments to occur and would defeat the purpose of providing ease-of access to fragile cabling because a user could not know how the cables were attached or how firmly the cables were attached.

Moreover, for this reason alone, Delk 312 would not be combined with Lutz in an attempt to show Applicants' claimed cable fastener. Delk 312's smooth surface zones on the strap portion 30 (see Delk 312, Figs. 5 and 6) limit Delk 312's locking ability with respect to cables as compared to the cable fastener of Applicants' claims in which the length of the cable fastener could be used to lock cables because at least all of one side of the cable fastener of Applicants' claims is covered with one type of cable fastener material. Thus, cables from very small diameter cables to very large diameter cables (or groups of cables) can be accommodated by the claimed invention. By contrast, the smooth surface zones of Delk 312 cause the size of Delk 312's cable opening to be restricted to the length of the smooth surface rather than to the size of cables being held by the strap portion 30 as in the cable fastener of Applicants' claims. Delk 312's cable opening creates an unpredictable structure because the smooth surface causes the cables to attach in different manners depending on the size of the cable(s) being attached.

In addition, the use of a single fastener type and the smooth surface zones of Delk 312 would interfere with cable fastening if combined with the elongate strip 282 of Lutz because the elongate strip 282 of Lutz requires two types of fastener material to be compressed upon themselves to hold cables prior to pressing the elongate strip 282 onto a substrate. Delk 312 does not require the strap portion 30 to be compressed upon itself because no purpose would be served by such action and such action risks damaging the cables that are to be held.

Further, the expanded surface of the head material of Delk 312's strap portion 30 causes the strap portion 30 of Delk 312 to attach more securely than would be desirable in applications for which the reconfigurability of Applicants' invention is needed. In

Applicants' invention, only the cable fastener body attaches to the substrate to any significant extent, i.e., the head surface area of Applicants' cable fastener is not used for securing the cable fastener to the substrate. The negligible head surface area of Applicants' cable fastener is more suitable than Delk 312 to be quickly and easily, and more importantly gently, removed for cable exchanging - especially if the cable fastener is used for holding fragile fiber optic cabling, which, being fragile, could break under the stress of removal if a configuration such as that in Delk 312 is used.

In an attempt to overcome the infirmities of the Lutz/Delk 312 combination, the Final Office Action has added Delk 037 to the Lutz/Delk 312 combination. This further combination is clearly oblivious to an expectation of success in the combination because the strap portion 30 of Delk 037 emphasizes the use of a much greater surface area than Lutz to attach cables to a substrate. Further, this additional combination blatantly hints at the use of impermissible hindsight, an issue dealt with subsequently. The expanded surface of the head material of Delk 037's strap portion 30 emboldens the undesirable position of the Final Office Action in which the strap portion 30 of Delk 312 and of Delk 037 more strongly encourage a more secure attachment to a substrate than would be advisable in applications for which the reconfigurability of Applicants' invention is needed. Further, Applicants' elongate body of the cable fastener is desirable because it allows for different sizes of cables and/or groups of cables to be held in a convenient, reconfigurable arrangement. Given that at least all of one side of the claimed cable fastener is covered with one type of fastener, the claimed invention is able to accommodate a wide variety of cable widths because the claimed cable fastener is able to simply wrap around the cable load and, regardless of the portion of the cable faster that

remains exposed, the cable fastener offers a portion of fastener material that may be used to hold the cables in position. The amount of exposed fastener material is also thin enough to hold such cables with the requisite security.

For at least these reasons, Applicants urge the Examiner to withdraw the 35 U.S.C. § 103(a) rejections of independent claims 1, 11, 23, and 34 as being unpatentable over Lutz in view of Delk 312 and in further view of Delk 037. Thus, Applicants believe that independent claims 1, 11, 23, and 34 are allowable. As dependent claims 2-6, 12-16, 20-22, 31-33, and 35-37 add limitations to their otherwise allowable base claims, respectively, Applicants respectfully request the Examiner to withdraw the 35 U.S.C. § 103(a) rejections to these claims.

Claims 1-6, 11-16, 20-23 and 31-37 stand rejected under § 103(a) as being unpatentable over Lutz in view of Delk 037. Applicants respectfully traverse.

Applicants respectfully submit that combining only Delk 037 with Lutz presents many of the same infirmities for which the Lutz/Delk 312/Delk 037 combination suffers. Specifically, the expanded surface of the head material of Delk 037's strap portion 30 suffers from the undesirable position of the Final Office Action in which the strap portion 30 of Delk 312 mandates a more secure cable attachment than is advisable in applications to which the reconfigurability of Applicants' invention is directed. Unlike the head surface area of Applicants' cable fastener, Delk 037's head surface area is used for securing the cable fastener to the substrate. The negligible head surface area of Applicants' cable fastener is markedly more suitable than Delk 037, allowing the claimed cable fastener to be more quickly and easily removed for cable exchanging than other

alternatives (including the proposed Delk 037/Lutz combination), without the risk of damaging the cables in the process.

In addition, neither of the above § 103(a) rejections has established a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. In *re* Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2142. The Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness.

Applicants wish to emphasize that no appropriate suggestion exists for combining the cited references. The showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular . . . . Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” In *re* Dembiczak, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination. The only suggestion provided for the particular claimed combination is Applicants' disclosure, which is improper hindsight. Besides the Delk references providing a poor size fit when combined with Lutz, the Delk references

provide additional force in the cable attachment. No reason for combining the Delk references with Lutz exists unless one were attempting to find a reference to show Applicants' claims, which combination has been shown as defective for this purpose. Thus, the § 103 rejections of claims 1-6, 11-16, 20-23 and 31-37 should be withdrawn if for this reason only.

Further, regarding the suggestion or motivation to combine Delk 037 with Lutz (or to combine both Delk 312 and Delk 037 with Lutz), Applicants respectfully submit that not only do the references fail to provide the requisite motivation, no such suggestion for combining is presented in the Final Office Action. The Final Office Action simply states that "[i]t would have been obvious ... to have modified Lutz to have substituted the cable fastener as taught by Delk [037] since the cable fasteners are art recognized equivalents at the time" of the invention (see Final Office Action, page 6).

Significantly, as stated above, the poor fit of Delk 037's strap portion 30 with the patch 281 of Lutz would discourage one of ordinary skill in the art from looking to Delk 037, much less also adding the detrimental strap portion 30 of Delk 312 to modify Lutz.

In operation, Delk 037 secures cables with the strap portion 30 only after pressing the head of the strap portion 30 onto a surface, while Lutz, on the other hand, first secures cables to one another with the elongate strip 282 prior to pressing the elongate strip 282 configuration onto a patch. In view of the mutually exclusive cable fastener operations of Delk 037 and Lutz, one of ordinary skill in the art would not, on considering Lutz, thus look to Delk 037 to modify the elongate strip 282 of Lutz to form a cable fastener such as that claimed by Applicants. To avoid redundancy, the reasons that one would not look to Delk 037 after considering Lutz will not be repeated again at this point of the response.

Thus, Applicants respectfully submit that the only suggestion Applicants can discern that leads to such a combination is Applicants' disclosure, which, as the Examiner will appreciate, would be improper hindsight.

In view of the Lutz/Delk 037 combination's failure to teach or disclose Applicants' cable fastener, there cannot be a reasonable expectation of success for combining Delk 037 with Lutz to produce a cable fastener having at least all of one side of the cable fastener being covered with one type of fastener material as required by Applicants' claim 1. One cannot expect success from combining the multi-fastener material cable fastener of Lutz with the single, spaced fastener material of either Delk 037 or Delk 312's strap portion 30 because a different substrate altogether would be required to accommodate Lutz's elongate strip 282. Further, not only would the combination fail to successfully provide Applicants' claimed invention, neither of these two types of cable fastener systems would operate correctly with the other system. In addition, while Delk 037 teaches a single type of fastener material, Lutz requires two types of fastener material to hold cables. Delk 037 has only one kind of fastener material, but uses a head with an opening while Lutz holds cables by using an elongate strip 282 with two kinds of fastener material to allow the strip to stick to itself. Thus, one would not, and could not, have a reasonable expectation of successfully producing the claimed invention by making any such a combination with Delk 037, Delk 312, and/or Lutz.

Further, Delk 037, Delk 312, and Lutz would not be combined in any arrangement because they use two different methods to hold cables. Delk 037 and Delk 312's strap portion 30 includes a head with an opening in which the other end of the strap portion 30 passes through to form a cable opening. The head of the strap portion 30 is pressed

against a base plate to secure both the strap portion 30 and the cables. Lutz's elongate strip 282 is a strap without an opening and, unlike either Delk 312 or Delk 037, is a strap with two types of fastener material which wraps upon itself to hold cables.

In addition, if an arrangement could be found in which the cited references could possibly be combined such that a cable fastener of sorts were created to hold cables, the arrangement would not provide the simple technique for quickly securing or removing a variable number of cables provided by the claimed invention. One possible arrangement would leave room for only one or a small number of cables with the fastener being difficult to position, while another arrangement may allow a greater number of cables to be held but the fastener would require substantial handling of sometimes fragile cabling to acquire access to the cables. The arrangement would not account for the additional care that is required for moving fragile cables in a relatively small space. An arrangement of the cited references would lead to a complex cable access method that would be susceptible to breaking cables upon access. For example, cable damage would be likely whether the cables were removed or added to a group of previously secured cables, a solution obviously unacceptable, and a problem avoided by the claimed invention.

As demonstrated above, the claimed limitations of independent claim 1 are not taught, disclosed, or otherwise suggested in the cited portions of Lutz, Delk 037, Delk 312, or any combination thereof. Thus, the cited references would not be combined in any attempt to support a 103 rejection of Applicants' claims because their combination would fail to teach the claimed invention and a prima facie case of obviousness has not been established in the Final Office Action.

For at least these reasons, Applicants urge the Examiner to withdraw the 35 U.S.C. § 103(a) rejections of independent claims 1, 11, 23, and 34 as being unpatentable over Lutz in view of Delk 037. Thus, Applicants believe that independent claims 1, 11, 23, and 34 are allowable. As dependent claims 2-6, 12-16, 20-22, 31-33, and 35-37 add limitations to their otherwise allowable base claims, respectively, Applicants respectfully request the Examiner to withdraw the 35 U.S.C. § 103(a) rejections to these claims.

### CONCLUSION

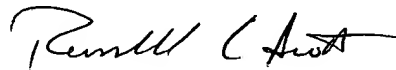
Applicant submits that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on May 15, 2006.

  
Attorney for Applicant

5/15/06  
Date of Signature

Respectfully submitted,



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